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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-460759-001 DT 09/16/2015

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA

SUSAN L LUDER

v.

JUAN CARLOS ACOSTA (001)

MARK N WEINGART

REMAND DESK-LCA-CCC
WHITE TANK JUSTICE COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number TR–2013–460759.

Defendant-Appellant Juan Carlos Acosta (Defendant) was convicted in White Tank Justice Court of driving under the influence and driving under the extreme influence. Defendant contends the trial court erred in denying his motions for judgment of acquittal. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On December 9, 2013, Defendant was cited for driving under the influence, A.R.S. § 28–1381(A)(1), driving under the extreme influence, A.R.S. § 28–1382(A)(1) (0.15 or more); and no proof of insurance, A.R.S. § 28–4135(C). At the trial in this matter, Sergeant Anthony Cruz of the Maricopa County Sheriff's Office testified he was on duty on December 9, 2013, near Dysart Road and Camelback Road in Litchfield Park. (R.T. of Nov. 21, 2014, at 58, 62–63.) At about 2:00 a.m., he came into contact with Defendant in a CVS parking lot. (*Id.* at 63.) He saw a Mercedes Benz SUV with its engine running and its headlights on parked slightly away from the front door and not in a parking slot. (*Id.* at 64, 70.) At that time, the weather conditions were chilly, about 30 to 40 degrees. (*Id.* at 85.) When Sergeant Cruz looked into the vehicle, he saw the driver asleep. (*Id.* at 65, 78, 97.) He also saw a firearm on the floorboard of the passenger's side and an open can of beer in a cup holder. (*Id.* at 66, 71, 97.) The doors were unlocked, so Sergeant Cruz opened the passenger's side door, and when he did so, he could smell the strong odor of alcohol. (*Id.* at 66, 73, 97.) He retrieved the gun and placed it in his patrol vehicle, and then tried to awaken the driver, but was unable to do so. (*Id.* at 67.) At that point, he noticed the driver had his foot on the gas pedal, but the engine was not revving. (*Id.* at 67, 77, 95.) He reached inside, turned off the engine, and removed the ignition key, and then noticed that neither the fan nor heater in the vehicle was on. (*Id.* at 70, 78.)

Once Sergeant Cruz was able to awaken the driver (Defendant), Defendant appeared to be confused. (R.T. of Nov. 21, 2014, at 71.) When Sergeant Cruz asked Defendant where he was, Defendant said, "I'm at work." (*Id.* at 72.) Sergeant Cruz noticed Defendant had bloodshot, watery eyes and slurred speech. (*Id.* at 73.) Sergeant Cruz asked Defendant to look around and again describe where he was, and Defendant said, "I'm at a friend's house." (*Id.* at 72.) Sergeant Cruz turned off the headlights, asked Defendant to step out of the vehicle, and said he was under arrest for DUI. (*Id.* at 72, 78, 99.) Once Defendant got out of the vehicle, he was uneasy on his feet and had to lean against the vehicle. (*Id.* at 73.) Defendant said he wanted to go home, but Sergeant Cruz said that was not possible because Defendant was under arrest. (*Id.* at 80.) Defendant's home was located less than ¼ mile from where they were in the parking lot. (R.T. of Nov. 24, 2014, at 10, 40.) At trial, the parties stipulated to the BAC readings, which were 0.151 and 0.163. (R.T. of Nov. 21, 2014, at 83.)

After the testimony from Sergeant Cruz, the State rested. (R.T. of Nov. 24, 2014, at 25.) Defendant's attorney made a motion for judgment of acquittal, which the trial court denied. (*Id.* at 34–37.) Defendant then testified and said he never drank and drove. (*Id.* at 38–39.) He contended he had driven to the CVS parking lot where he met some friends, and they drove to the Cardinals game. (*Id.* at 40–41.) Once they got to the game location, he started drinking about 2:00 p.m. (*Id.* at 40.) He said the group had two designated drivers, so after the game, the group planned to go back to the CVS parking lot and one of the designated drivers would drive Defendant to his house. (*Id.* at 42–43.)

Defendant said that he and his wife were having issues and thus he was not staying at his house in Litchfield Park, and instead he was staying at a house in Buckeye. (R.T. of Nov. 24, 2014, at 43–44.) The friend did not want to drive Defendant to Buckeye, so Defendant just stayed in his vehicle at the CVS parking lot. (*Id.* at 44, 46–49.) Defendant said he fell asleep in the front seat because there were items in the back seat. (*Id.* at 50.) He said he did not want to drive to the area of his house in Litchfield Park because he did not want to chance getting stopped by the police. (*Id.* at 49, 52.) He also testified about what it would take to get the vehicle into gear. (*Id.* at 58–59.) On cross-examination, Defendant acknowledged he was impaired by alcohol and agreed with the BAC readings. (*Id.* at 61, 84–85.)

After Defendant finished testifying, the defense rested. (R.T. of Nov. 24, 2014, at 91.) The trial court instructed the jurors, including the instruction required by *State v. Zaragoza.* (*Id.* at 129.) After hearing arguments from the attorneys, the jurors found Defendant guilty of both charges. (*Id.* at 153–54.) Defendant's attorney renewed his motion for judgment of acquittal, which the trial court took under advisement. (*Id.* at 155–58.) The trial court subsequently denied that motion. (Ruling on Motion, dated Nov. 25, 2014.) The trial court later imposed sentence. (R.T. of Jan. 29, 2015, at 8–15.) On that same day, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZ. CONST. Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE TRIAL COURT ERR IN DENYING DEFENDANT'S MOTIONS FOR JUDGMENT OF ACQUITTAL.

Defendant contends the trial court erred in denying Defendant's two motions for judgment of acquittal, one made at the close of the State's case and one made after the jurors returned their verdicts. On a Rule 20 motion for a judgment of acquittal, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt; substantial evidence being such proof that a reasonable person could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt. *State v. Parker*, 231 Ariz. 391, 296 P.3d 54, ¶ 70 (2013). The procedure the trial court must use is as follows:

> When reasonable minds may differ on inferences drawn from the facts, the case must be submitted to the jury, and the trial judge has no discretion to enter a judgment of acquittal. Thus, in ruling on a Rule 20 motion, . . . a trial court may not re-weigh the facts or disregard inferences that might reasonably be drawn from the evidence.

State v. West, 226 Ariz. 559, 250 P.3d 1188, ¶ 18 (2011), citing *State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997).

In *State v. Love*, 182 Ariz. 324, 897 P.2d 626 (1995), the Arizona Supreme Court rejected a "boilerplate formula" to determine whether a driver was in actual physical control of a vehicle and instead gave the following factors for the trier-of-fact to consider:

> Factors to be considered in any given case might include: whether the vehicle was running or the ignition was on; where the key was located; where and in what position the driver was found in the vehicle; whether the person was awake or asleep; if the vehicle's headlights were on; where the vehicle was stopped (in the road or legally parked); whether the driver had voluntarily pulled off the road; time of day and weather conditions; if the heater or air conditioner was on; whether the windows were up or down; and any explanation of the circumstances advanced by the defense.

182 Ariz. at 326, 897 P.2d at 628. In the present case, the State's evidence in its case-in-chief showed the following: (1) the vehicle was running; (2) the ignition was on; (3) the ignition key was located in the ignition; (4) Defendant was found in the vehicle in the driver's seat with his foot on the gas pedal; (5) Defendant was asleep; (6) the vehicle's headlights were on; (7) the vehicle was stopped, but not in a parking space; (8) Defendant had pulled off the road; (9) it was 2:00 a.m.; (10) the temperature was 30 to 40 degrees; (11) the heater was not on; and (12) the doors were not locked. Because this evidence was sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt, and because the best that could be said in Defendant's behalf is that reasonable minds could differ on inferences drawn from the facts, the trial court had no discretion to enter a judgment of acquittal and instead was required to submit the case to the jurors. *West* at ¶ 18; *Lee*, 189 Ariz. at 603, 944 P.2d at 1217.

In *State v. Zaragoza*, 221 Ariz. 49, 209 P.3d 629 (2009), the Arizona Supreme Court followed its holding in *Love* and set forth a jury instruction for use in an actual physical control DUI case:

> In determining whether the defendant was in actual physical control of the vehicle, you should consider the totality of the circumstances shown by the evidence and whether the defendant's current or imminent control of the vehicle presented a real danger to [himself] [herself] or others at the time alleged. Factors to be considered might include, but are not limited to:
>
> 1. Whether the vehicle was running;
> 2. Whether the ignition was on;
> 3. Where the ignition key was located;
> 4. Where and in what position the driver was found in the vehicle;
> 5. Whether the person was awake or asleep;
> 6. Whether the vehicle's headlights were on;
> 7. Where the vehicle was stopped;
> 8. Whether the driver had voluntarily pulled off the road;
> 9. Time of day;
> 10. Weather conditions;
> 11. Whether the heater or air conditioner was on;
> 12. Whether the windows were up or down;
> 13. Any explanation of the circumstances shown by the evidence.
>
> This list is not meant to be all-inclusive. It is up to you to examine all the available evidence and weigh its credibility in determining whether the defendant actually posed a threat to the public by the exercise of present or imminent control of the vehicle while impaired.

Zaragoza at ¶ 21. The trial court gave this instruction to the jurors, and they subsequently found Defendant guilty of both charges. (R.T. of Nov. 24, 2014, at 129; 153–54.) After the jurors returned their guilty verdicts, Defendant's attorney made a motion for judgment of acquittal, which the trial court denied.

Defendant contends on appeal that the trial court erred in denying that post-verdict motion for judgment of acquittal. The Arizona Supreme Court has set forth the standards for the trial court to use in ruling on a motion for judgment of acquittal and for an appellate court to use in reviewing the trial court's ruling:

> The standards for ruling on pre- and post-verdict motions for judgment of acquittal under Rule 20 are the same. On either motion, the controlling question is solely whether the record contains "substantial evidence to warrant a conviction."
>
> This question of sufficiency of the evidence is one of law, subject to de novo review on appeal.

West at ¶¶ 14–15. In this Court's *de novo* review, this Court concludes the evidence was sufficient for the jurors to return the guilty verdicts that they did. Because Defendant was in the driver's seat in his vehicle with the motor running and his foot on the gas pedal, this Court concludes Defendant posed an actual, present, or imminent danger. As the Arizona Supreme Court has said:

> The drunk who turns off the key but remains behind the wheel is just as able to take command of the car and drive away, if so inclined, as the one who leaves the engine on. The former needs only an instant to start the vehicle, hardly a daunting task.

Love, 182 Ariz. at 327, 897 P.2d at 629. To paraphrase *Love* as it applies to the present case: "The drunk who [puts the vehicle in park] but remains behind the wheel is just as able to take command of the car and drive away, if so inclined, as the one who leaves the [vehicle in drive]; the former needs only an instant to [put] the vehicle [in drive], hardly a daunting task." The trial court therefore correctly denied Defendant's motion for judgment of acquittal made after the jurors returned their verdicts of guilty.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court did not err in denying Defendant's two motions for judgment of acquittal, one made at the close of the State's case and one made after the jurors returned their verdicts.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the White Tank Justice Court.

IT IS FURTHER ORDERED remanding this matter to the White Tank Justice Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT 091620151320•

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